

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

District Court File No.

93-1385-SD

-v-

Circuit Court File No.

93-6389-AR

RICHARD VEZINA,

Defendant/Appellant.

HON. PHILIP E. RODGERS, JR.

James L. Pappas (P42269)

Prosecuting Attorney's Office 6ta.

Attorney for Plaintiff/Appellee

Peter H. Shumar (P20411)

Attorney for Defendant/Appellant

DECISION AND ORDER

Defendant/Appellant (hereafter Defendant) filed an interlocutory appeal following the District Court's denial of Defendant's Motion to Quash, Dismiss and/or Deny Sentence and/or Licensing Sanction Enhancements. Plaintiff/Appellee (hereafter Plaintiff) filed a brief in opposition to the appeal. Defendant later filed a reply to Plaintiff's brief. The parties waived oral argument. This Court has reviewed the appeal, the briefs and the Court file.

The following facts are uncontested:

1) Defendant is currently charged with the offense of OUIL, per se, second offense pursuant to MCLA 257.625(1); MSA 9.2325;

2) on August 7, 1986, Defendant was arrested and convicted of first offense OUIL:

3) on July 18, 1993, Defendant was arrested and charged with OUIL 2nd offense.

On September 20, 1993, Defendant entered a conditional plea of guilty to OUIL 2nd Offense. By Order of this Court dated September 17, 1993, the issue was preserved on appeal; sentencing and license sanctions are stayed pending the outcome of this appeal. Defendant seeks this Court's reversal of his conviction for OUIL 2nd Offense and remand of the case back to the District Court for entry of a

plea to OUIL 1st Offense, together with consistent license sanctions and sentencing. Defendant's reply brief, pp 4-5.

The pertinent statute, MCL 257.625(6); MSA 9.2325(6) provides, in part:

If a person is convicted of violating subsection (1), the following shall apply:

(a) Except as otherwise provided in subdivisions (b) and (d), the person who is guilty of a misdemeanor, and may be punished by 1 or more of the following:

(i) Service to the community for a period of not more than 45 days.

(ii) Imprisonment of not more than 90 days.

(iii) A fine of not less than \$100.00 or more than \$500.00.

(b) If the violation occurs within seven years of a prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00 and either of the following:

(i) Performing service to the community for a period of not less than 10 days or more than 90 days and may be imprisoned for not more than 1 year.

(ii) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to service to the community for a period of not more than 90 days.

The gravamen of Defendant's appeal focuses on the meaning of the word "violation" in MCL 257.625(6). The following text from Defendant's brief sets forth his argument:

At issue here is what does the term violation mean in the context of the above-quoted language? Defendant asserts that the term violation refers back to the meaning of the word convicted in the sentence that introduces [s]ubsection (b). That sentence states that if a person is convicted of violating subsection (1), then and only then, shall sentence enhancement pursuant to (b) apply. Further, one cannot violate a criminal

statute in the legal sense, unless one is convicted of the same.

* * *

The Court can consider the legislative intent in reviewing the statute where it does not violate the plain wording of the same. *Walkerville Education Assn v Walkerville Rural Communities School*, 165 Mich App 341; 418 NW2d 459 (1987); *Moore v Deor'lt of Military Affairs*, 398 Mich 324; 247 NW2d 801 (1976); and *Detroit Bd of Education v SUP': of Public Instruction*, 304 Mich 206; 7 NW2d 273 (1943).

This Court finds the following analysis, provided in Plaintiff's brief, to be helpful and persuasive:

In reviewing the enhancement portion of the statute before this, the primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the legislature. *People v Hawkins*, 181 Mich App 393, 396[; 448 NW2d 858] (1989). Statutory language should be construed reasonably, keeping in mind the purpose of the act. [Dept of Social Services] v *Brewer*, 180 Mich App 82, 84[; 446 NW2d 593] (1989).

The first criterion in determining intent is the specific language of the statute. *House Speaker v State Administrative Bd*, 441 Mich 547, 567[; 495 NW2d 539] (1993); *People v Hawkins*, 181 Mich App 393, 396 (1989). The Legislature is presumed to have intended the meaning it plainly expressed. *Frasier v Model Coverall Service Inc*, 182 Mich App 741, 744[; 453 NW2d 301] (1990); *AG ex rel rDeP't of Natural Resources v Sanilac County Drain Comm'r*, 173 Mich App 526, 531[; 434 NW2d 181] (1988). Courts may not speculate as to the probable intent of the Legislature beyond the words expressed in the statute. If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *Lorencz v Ford Motor Co*, 439 Mich 370, 376[; 483 NW2d 844] (1992); *People v Miller*, 186 Mich App 238, 241[; 463 NW2d 250] (1990), rev'd in part on other grounds, 440 Mich 631[; 489 NW2d 60] (1992); *Nat'l Exposition Co v Detroit*, 169 Mich App 25, 29[; 425 NW2d 497] (1988), lv den 432 Mich 853~; *** NW2d ***] (1989).

Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning; technical terms are to be accorded their peculiar meanings. MCL 8.3a; MSA 2.212(1), People v Tracy 186 Mich App 171, 176[; 463 NW2d 457] (1990); Victorson v Dep't of Treasury, 183 Mich App 318, 323~; 454 NW2d 256] (1990), [reversed on other grounds, 439 Mich 131; 482 NW2d 685 (1992)].

This Court also finds instructive the following analysis from page 4 of Plaintiff's brief,

In reviewing the above mentioned statute, Defendant-Appellant is attempting to have this Court equate the term "Conviction" with that of "Violation". These two terms have different meanings and using plain language address two distinct events.

A "Conviction" as defined by MCL 257.8a; MSA 9.1808(1) is:

. a final conviction, the payment of a fine, a pleas of guilty or nolo contendere if accepted by the court, or a finding of guilt .

A "Violation" as defined by Black's Law Dictionary [5th ed.] (1979) is:

Injury, infringement; breach of right, duty or law[.]

The Legislature used the word "Violation" not "Conviction". If the Legislature had intended that enhancement could only occur from date of prior conviction to present date of conviction; they would have used the term "Conviction" and the statute would read:

(b) if the conviction occurs within 7 years...

Since the Legislature is presumed to intend the meanings of the words they employ in the drafting of the laws that govern the people, it is clear that a person who violates the drunk driving provisions of the Michigan Motor Vehicle Code can be enhanced when the violation occurs within the specified time period from a prior

conviction. "Violation" relates to a different, earlier event than that of a "conviction".

This Court will not address the parties' arguments regarding whether a house bill analysis prepared before passage of a proposed bill is persuasive authority. Rather, in this case, the Court finds Defendant's argument that the words "violation" and "conviction." are used interchangeably to be wholly without merit. Certainly, the Legislature chose its language carefully and clearly!

intended that persons who violate the drunk driving laws within seven (7) years of a conviction for drunk driving shall be subject to certain sentencing enhancements and licensing sanctions. MCL 257.625; MSA 9.2325 and MCL 257.625(b); MSA 9.2325(2). The wording within the subject statute is unambiguous; the words "violation" and "conviction" are not interchangeable. The statute must be enforced as written. Frasier, *supra* at p 744; Lorenz, *supra*; *Hiltz v Phil's Quality Market*, 417 Mich 335, 343; 337 NW2d 237 (1983).

No person may continue to violate Michigan's drunk driving laws without sentence enhancement simply because his case is pending and a conviction on a prior offense has not yet been entered, or as this case Presents, because the seven year period terminates between the illegal activity and the conviction. The conviction clearly affirms the criminal nature of the violation and relates back to the date of the original wrongful activity. A crime is not committed on the day the jury returns its verdict but on the date the wrongful behavior was undertaken.

Defendant was charged with OUIL/ Per Se 2nd Offense, a violation of MCL 257.625(1); MSA 9.2325. Defendant pled guilty as charged to violating Michigan's drunk driving statutes within seven (7) years of his earlier conviction for OUIL 1st Offense. Defendant's appeal is hereby denied. This case is remanded to the District Court for sentencing and imposition of licensing sanctions.

IT IS SO ORDERED.

HON. PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 10/04/94